

**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 631 OF 2006
IN

FIRST APPEAL NO. 247 OF 2006.

Balkrishna Kulkarni and others.

..Appellants.

Versus.

Harikrishna B. Tiwari and others. ..Respondents.

Shri. Deepak Chitnis i/b Deepak Chitnis - Chaparikar &
Co., for the appellants.

Shri. U. T. Lulia for the respondent Nos. 1A to 1C.

CORAM: S.B.MHASE, J.

DATE : MAY 4, 2006.

P.C.

1. Heard both sides. The land admittedly belongs to the appellant - charitable Trust. By the notification dated 20.3.1957, Government of Maharashtra has reserved the said land under section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 for non-agricultural and industrial development and thereby the land cannot be used for agricultural purpose. It is further reflected that the city survey has been carried out and the land is given city survey no. 1100. Thus, the description of the property in plaint paragraph no.1 and Government notification shows that the land is non agricultural

land. As against that the plaintiff - respondent has come with a case that the plaintiff - respondent is cultivating the said land as agricultural land on the basis of agreement executed with the Trust and the respondent is making payment of Rs.8,000/-. Even on perusal of the so called agreement, which according to the appellant is terminated,it can be seen that the plaintiff was Manager of the said Trust to look after the land. No doubt, by the said agreement he was allowed to cultivate the land and the amount of Rs.8,000/- was to be paid out of the income to the Trust. However, rest of the income and profit of the said agricultural activities were allowed to be taken by the respondent so as to manage the said property. Since the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 were not applicable to the said land, the question of person being tenant or not does not arise on the basis of the said agreement. That question would have arisen provided the land is agricultural land and the status of the tenancy under section 70-b of the Bombay Tenancy and Agricultural Lands Act, 1948 is claimed. But since the land is not agricultural land and is reserved for non agricultural purpose, the provisions of the said Act are not applicable. Even the learned counsel for the respondent states that those provisions are not applicable as the case is governed by the Transfer of Property Act. Under

the Transfer of Property Act, the property can be transferred by way of a lease only so as to create leasehold rights in the property. Since it is a transfer of interest in the property, it requires a registered agreement duly signed by the lessor and lessee as provided under the said Act. However, the said agreement is not registered document and it is equally not properly stamped. Above all, by the said document, the agreement in respect of the management of the said property is executed, however, the document prima facie does not speak about the creation of the leasehold rights in the property. On the contrary, the document contains a clause that on the basis of this document the tenancy cannot be claimed. That document prima facie brings about the intention of the parties and reflects upon the nature of the document and transaction. If the man is placed in possession of the property as a manager then he cannot have a superior rights to claim injunction as against the owner of the property. The trial Court at number of places has observed that there is no documentary evidence in respect of the possession produced by the respondent. In order to get a decree of perpetual injunction, the plaintiff - respondent is under an obligation to prove that he is in possession of the property and the said possession is referable to the lawful title. Prima facie, on analysis of the material

placed before this Court, the plaintiff - respondent has not proved possession of the property, much more that the document is referable to the lawful possession.

2. The matter does not rest here. It is to be mentioned here that immediately after filing of the suit, notice of motion was taken out by the respondent bearing No. 4190 of 1990. However, ad-interim injunction was refused initially and after hearing both sides the notice of motion was disposed of by the City Civil Court. Thus, it shows that during the pendency of the suit there was no injunction order in favour of the present respondent - plaintiff. Therefore, it is only when the decree has been passed, which is the subject matter of the present appeal, the order of perpetual injunction has come into force for the first time. However, in view of the above referred circumstances and looking to the fact that the property belongs to the public trust and person who claims to be a manager of the property is trying to snatch and swallow the property of the public trust, this Court is persuaded to grant stay to the impugned judgment and order. Therefore, Civil Application is allowed in terms of prayer clause (a). However, it requires to be mentioned that the appellant shall not create any third party interests in respect of the suit property.

Application is accordingly disposed of.

3. At this stage the learned counsel for the respondent prays for stay of this order. That prayer is declined.

(S.B.MHASE, J.)